



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE SAFETY CENTER

HQ AFSEC/CD
9700 G Avenue NE
Kirtland AFB NM 87117-5670

MAY 10 2012

Mr. Robert Delaware
Dept MR 1169
P O Box 55819
Boston MA 02205

Dear Mr. Delaware,

In reply to your 14 March 2012 Freedom of Information Act (FOIA) request for the accident report on a mishap occurring on 14 February 1961, attached is the releasable report.

The FOIA provides that specific types of documents or portions of them are exempt from disclosure. Accordingly, portions have been redacted. They are not releasable for the following reasons:

a. Safety investigation boards' findings, analysis and recommendations are exempt from disclosure under the United States Code, Title 5, Section 552(b)(5) and Department of Defense Regulation 5400.7-R Air Force Manual C3.2.1.6. These records are not routinely available by law to a party in litigation with the government. Release of this information would jeopardize a significant government interest by inhibiting its ability to conduct future safety investigations and would have a stifling effect on the deliberative process of Air Force officials. Board members are promised that the information they furnish will be held in confidence and will not be used for any purpose other than mishap prevention. By doing this, we provide an atmosphere in which our investigators can thoroughly explore and analyze all available information before making their determinations. This process is essential to an effective mishap prevention program.

b. The statements of any witnesses promised confidentiality by the safety investigation board, as well as any direct or implied references to such testimony, are also exempt from disclosure under the United States Code, Title 5, Section 552(b)(5) and Department of Defense Regulation 5400.7-R Air Force Manual C3.2.1.6. In order to promote full disclosure, some witnesses are promised by the safety investigation board that their testimony will be used solely for mishap prevention and for no other purpose. This promise of confidentiality is made in order to encourage witnesses to disclose to the investigating board everything they know about the mishap even though the statements they make may be against their personal interest or possibly incriminating. Disclosure of this information would be contrary to the promises of confidentiality extended to witnesses. There is no time limit placed on these promises.

c. The chilling effect of disclosing confidential analyses and witness statements would greatly inhibit the ability of the Air Force to gather and evaluate safety information, would result in the increased loss of aircraft and crewmembers, and ultimately have a detrimental effect on national security.

d. Individuals have a privacy interest in personal information about them in government records. When that personal interest outweighs the public interest in that particular information, it is not subject to disclosure, in accordance with the United States Code, Title 5, Section 552(b)(6) and Department of Defense Regulation 5400.7-R Air Force Manual C3.2.1.8 and C3.2.1.9.3.

In addition to the federal law and regulation cited above, federal case law clearly establishes the DoD's privilege against release of certain information obtained through the safety investigation process. See *Machin v. Zuckert*, 316 F.2d 336 (D.C. Cir.), *cert. denied* 375 U.S. 896 (1963); *United States v. Weber Aircraft Corp.*, 465 U.S. 792 (1984); and *Badhwar v. U.S. Department of the Air Force*, 829 F.2d 182 (D.C. Cir., 1987).

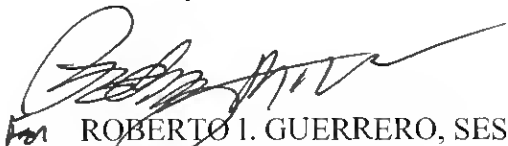
Pursuant to his authority, when a mishap report is over 30 years old, the Air Force Chief of Safety can, under certain circumstances, release the safety board's findings. He has done so in this case.

Should you decide to appeal this decision, you must write to the Secretary of the Air Force within 60 calendar days from the date of this letter and reference FOIA 2012-02681-F. Include in the appeal your reasons for reconsideration and attach a copy of this letter. Address your letter as follows:

Secretary of the Air Force
THRU: AFSEC/JAR
9700 G Avenue SE
Kirtland AFB NM 87117-5670

I hope this information is helpful.

Sincerely



ROBERTO I. GUERRERO, SES
Executive Director